Supreme Court, U.S.
FILED
DEC 27 1993
OFFICE OF THE CLERK

No. 93-697

In The

Supreme Court of the United States

October Term, 1993

SNAP-ON TOOLS CORPORATION, TIM KASH, and RAY PARK,

Petitioners,

v.

DAN EULRICH, VIRGINIA EULRICH, and DEPARTMENT OF JUSTICE OF THE STATE OF OREGON,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Oregon

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

Petitioners Snap-on Tools Corporation[1], Tim Kash and Ray Park briefly reply to Respondents' Brief in Opposition as follows:

Supposed Pre-Trial Procedures. Citing no statutes or case law, Respondents contend that Oregon's system satisfies due process because a court, upon a pre-verdict motion, can eliminate any punitive damages claim not supported by "substantial" evidence and can cap the amount that a jury can eventually award. (Resp. Br. at 5.) No such rules exist in Oregon. If, upon a pre-verdict motion, a court finds that evidence exists to support a finding of the misconduct necessary for a punitive damages award, the issue must be submitted to the jury for whatever amount the plaintiff has requested. *Young v. Crookham,* 618 P.2d 1268, 1274 (Or. 1980). This is just a normal summary judgment/directed verdict standard. Moreover, the pre-verdict procedures relied on by Respondents have nothing to do with determining whether the amount actually awarded is excessive.

Supposed Post-Trial Review. Respondents suggest that, post-trial, an Oregon court will set aside the amount of a punitive damages award if the amount is not supported by "substantial evidence." (Resp. Br. at 6.) Again, no statute or case cite is provided for this view. The actual rule in Oregon is that a punitive damages award must be upheld by the courts if there is any evidence to show the misconduct required for such an award. *See, e.g., Webster*

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[1] Snap-on Tools Corporation has no parent company and no subsidiaries that are not wholly-owned.

v. Dieringer's Variety, Inc., 734 P.2d 402, 405 (Or. App. 1987). The amount of the award can never be reviewed to determine if it is excessive. *Van Lom v. Schneiderman*, 210 P.2d 461 (Or. 1949).

Waiver. Whether the punitive damages award is excessive is an issue that can only exist after the jury has rendered its verdict. Petitioners raised the issue in a timely post-trial motion. (*See* Petition at A-46 to A-50.) The courts below did not accept Respondents' waiver argument and even Respondents conceded, in their brief filed with the Oregon Supreme Court, that petitioners had not waived the issue of whether the award was excessive.

Non-Excessiveness. Respondents' argument that the award was not excessive under due process standards misses the point. The Court does not have before it any lower court ruling that the award was reasonable because all lower courts refused to hear the issue. The issue before the Court is whether Respondents were entitled to be heard on the issue of excessiveness.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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